

**REMARKS/ARGUMENTS**

Claims 1-22 are present in this application. Claims 6, 10, 11, 13 and 17 were previously withdrawn. By this Amendment, claims 1, 21 and 22 have been amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 1-5, 7-9, 12, 14-16 and 18-22 were rejected under 35 U.S.C. §103(a) over U.S. Published Patent Application No. 2001/0014868 to Herz in view of U.S. Published Patent Application No. 2002/0026363 to Dunaway, Jr. This rejection is respectfully traversed.

There are at least two important distinctions between the system defined according to the claimed invention and that disclosed in the Herz publication. First, the Herz system is focused entirely on pricing and promotion from a vendor's perspective. Herz repeatedly refers to pricing and promotion to achieve the ultimate goal of maximizing the vendor's profits. See, for example, the Abstract and paragraphs [0002], [0004], [0236] *et seq.*, [0302] and others. Herz describes methods that endeavor to "entice" shoppers to buy more products. See, for example, the Abstract and paragraph [0005]. In contrast, the system according to the claimed invention serves to benefit the consumer and identifies relevant products and services that most benefit the user (i.e., without regard to vendor profits).

Secondly, since the Herz system solely serves for the benefit of a vendor in an effort to maximize vendor profits, user profiles, which are used to identify products, promotions and pricing, are generated by tracking the behavior of shoppers. See, for example, paragraph [0005] *et seq.*, paragraph [0028] *et seq.*, paragraph [0112] *et seq.* and others. In contrast, the system according to several claims of the invention compile a user profile according to user-entered parameters. Since the system defined according to the claimed invention serves to maximize a benefit to the user, many of the parameters of a user profile are self-directed. The Herz system is

rather premised on a vendor's perspective as noted above, and thus consumer or shopper profiles do not include user-entered parameters.

The Dunaway publication does not correct these deficiencies. In fact, Applicant respectfully submits that the Herz publication teaches away from any modification to include these features of the invention as such modifications would be in direct contrast with the express teachings and objectives of the Herz system.

In an effort to clarify distinguishing features of the invention, claim 1 has been amended to recite that the relevant items identified according to the user profile are those that most benefit the user. Support for this amendment can be found in the specification at, for example, paragraphs [0004], [0009], [0031], [0032], and others. In contrast, as discussed above, the Herz system determines products, prices and promotions in a manner that "attempts to maximize the vendor's profits." It is clear that maximizing a vendor's profits is not in the best interests of the consumer. Applicant thus respectfully submits that the rejection of claim 1 should be withdrawn.

Dependent claim 3 recites that the step of compiling a user profile is practiced according to user-entered parameters. In this context, the Office Action references paragraph [0005] in the Herz publication. This paragraph, however, illustrates the distinction pointed out above as all parameters for the shopper profiles are obtained "by tracking the behavior of shoppers." The Herz system does not in any manner receive user-entered parameters for defining the shopper profiles. Indeed, each of the points referenced in the Office Action, in paragraph [0005] of Herz, and throughout the Herz publication is obtained by some external source that tracks shopper behavior.

Claim 5 recites that in step (b), the relevant items are identified based on a lowest cost consistent with the user profile. In this context, the Office Action references paragraph [0036],

describing a determination of shoppers' goals and references a price limit for a particular product or a characteristic of "price sensitivity" based on past shopping behavior. Although these parameters relate peripherally to a specific product price, it is apparent that the system would not in any manner identify relevant items based on a lowest cost consistent with the user profile. Rather, the Herz system would identify such products that would appeal to a particular shopper while maximizing vendor profits. That is, knowing the shopper's history, the Herz system will identify and promote products that fall in the shopper's price range while still generating maximum profit for the vendor.

Independent claim 14 defines a method of obtaining and maintaining consumer items including products and services at a lowest available cost over a global network. Claim 14 defines a step of compiling a user profile according to a pattern of customer use and user-entered parameters. As discussed above, the Herz system does not in any manner compile a user profile according to user-entered parameters. In fact, the Herz system teaches away from any such application since it functions entirely from a vendor's perspective and solely determines the shopper profiles by past shopper behavior. As such, Applicant submits that the rejection of claim 14 is misplaced.

Claim 16 recites that the relevant items are identified based on a lowest cost consistent with the user profile. In this context, see the discussion above with regard to claim 5.

Claim 21 defines a computer system for administering consumer items where a user computer runs a computer program that identifies relevant items according to a user profile, where the relevant items are those that most benefit the user. As discussed above, at least this subject matter is lacking in the Herz publication, and since the Herz publication teaches away from any modification to correct this deficiency, the combination of Herz and Dunaway similarly

fails to render obvious this claimed subject matter. Applicant thus respectfully submits that the rejection of claim 21 should be withdrawn.

Claim 22 defines a computer program embodied on a computer-readable medium for administering consumer items. The computer program includes, among other things, means for compiling a user profile relating to a desired consumer item based at least on user-entered parameters. Since such parameters are lacking in the Herz publication and Herz in fact teaches away from including such parameters, Applicant submits that the rejection of claim 22 should also be withdrawn.

Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

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